

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division**

2026/FAM/gua/FP/00009

IN THE MATTER OF THE STATUS OF CHILDREN ACT, CHAPTER 130

B E T W E E N

KC

Applicant

AND

**FDC
(a minor)**

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Cassietta McIntosh-Pelecanos with Louisiene Louissaint for the Applicant
Sheila Johnson-Smith, Guardian *ad litem*

Hearing date(s): 14 May, 2026 and 19 June 2026

RULING

DELANCY, J

[1.] This is the Court’s ruling on an application brought by the Applicant for a declaration of paternity and an amended birth certificate for FDC also known as FAC (“the minor child”).

Brief Background

[2.] The Applicant commenced the action by filing an Originating Application filed on 30 January 2026 seeking the following Orders:

- 1.1 The Applicant is the father of the minor child, FDC [*de-identified*].
- 1.2 The minor child’s birth certificate be noted with the Applicants [*sic*] name.

- 1.3 That the said minor child's name be changed from FDC [*de-identified*] to FDKC [*de-identified*].

[3.] The Applicant filed an Affidavit on 30 January 2026; and an Affidavit of FM filed on 31 January 2026.

[4.] On 14 May 2026 the Applicant filed an Amended Originating Application and a Supplemental Affidavit to include to include:

- 1.4 that the Applicant be awarded custody care and control of the minor child; and
- 1.5 that the minor child not be removed from the Island of Grand Bahama until final determination by the Court.

[5.] On 14 May 2026 the Court granted an Interim Order in the following terms:

1. The minor child FDC [*de-identified*] not be removed from the Island of Grand Bahama at anytime prior to the final determination of the Court in this matter and/or without further order of this court.
2. That Ms. Sheila Johnson-Smith be appointed to act as Guardian Ad Litem herein.
3. The filed documents in this matter be served on:
 - i. KB [*de-identified*] the maternal aunt of the minor child;
 - ii. the Department of Social Services in Grand Bahama; and
 - iii. the maternal grandmother of the minor child FDC [*de-identified*] by substituted service of the documents on KB [*de-identified*].

Evidence

Applicant's Evidence

[6.] The Applicant relies on the following in his Affidavit filed herein on 30 January 2026 and Supplemental Affidavit filed 14 May 2026:

- (a) the minor child was born on 25 February 2026 to LDA [*de-identified*] who died the following day (*copy of Notice of Birth and LDA's Death Certificate exhibited*);
- (b) at the time of the minor child's birth LDA was married to FM but separated [*de-identified*];
- (c) a Deoxyribonucleic Acid (DNA) test was conducted and confirmed that he was the biological father of the minor child (*copy of test exhibited*);
- (d) the father and minor child's maternal grandmother swore an Affidavit of Birth for the minor child on 16 April 2025 (*copy of Affidavit exhibited*);
- (e) to date, the father has been unable to obtain a birth certificate for the minor child;
- (f) he seeks a declaration that he is the father of the minor child and that she is to assume his surname;
- (g) he also seeks custody care and control of the minor child and has no objection to allowing access to her maternal relatives through a mutually agreed plan.

FM's Evidence

[7.] FM [*de-identified*] filed an Affidavit on 30 January 2026 and states as follows:

- (a) he resides on the island of Eleuthera;
- (b) he and LDA were married on 2 August 2019;
- (c) at time of LDA's death they were married but were living separately;
- (d) he became aware that LDA gave birth to a girl child and he is not the child's biological father as he and LDA were not intimate for a period of time, in excess of 5 years;
- (e) he has no objection to the Applicant being named the minor child's father.

Guardian's Report

[8.] The Guardian ad litem having been appointed to safeguard the interest of the child conducted inquiries and produced a Report which may be summarized as follows:

- (a) subsequent to being interviewed, the Applicant visited his home and observed the minor child in that environment;
- (b) the Applicant is a 51-year-old male, self-employed and holder of a valid business licence;
- (c) the Applicant was in a relationship with LDA, the minor child's biological mother, who died the day after the minor child's birth due to complications during delivery;
- (d) the Applicant initially expressed doubts about the paternity of the minor child due to him having a tumultuous relationship with LDA;
- (e) the Applicant is also the father of a 27-year-old daughter;
- (f) a DNA was conducted and it was confirmed that the Applicant is the biological father of the minor child;
- (g) the Applicant and the minor child's maternal relatives have been alternating physical custody of the minor child on a weekly basis. However, upon learning of the maternal relatives plans to relocate the minor child, he sought and was granted an injunction restraining the removal of the minor child from Grand Bahama;
- (h) the minor child's maternal grandmother who resides in the United States of America (United States) was interviewed. She expressed that while she was not objecting to the Applicant being granted legal custody of the minor child, she wishes to maintain a relationship with the minor child including travel to the United States;
- (i) the minor child's maternal aunt, KB, takes care of the minor child during the alternating weekly visits to her maternal relatives. KB indicated that she will be returning permanently to her home in the United States in August 2026;
- (j) the minor child is loved and cared for by her paternal and maternal relatives;

- (k) it is recommended that the Applicant be given custody of the minor child and that the maternal relatives be allowed access to facilitate a relationship with her siblings.

Law and Analysis

[9.] The Court is enjoined by the provisions of Section 3 of the Child Protection Act (“the CPA”) whenever making a determination in any matter involving “(a) *the upbringing of a child; or (b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the paramount consideration*”.

[10.] The Court has the power to make a declaration of paternity under Section 9 of The Status of Children Act Chapter 130 (“the SOCA”) provides that:

- (1) **Any person who** —
- (a) being a woman, alleges that any named person is the father of her child;
 - (b) **alleges that the relationship of father and child exists between himself and any other person**; or
 - (c) **being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons**, may apply in such other manner as may be prescribed by rules of court to the court for a declaration of paternity, **and if it is proved to the satisfaction of the court that the relationship exists the court may make a declaration of paternity** whether or not the father or the child or both of them are living or dead.

[Emphasis added]

[11.] Section 151 of CPA provides that:

- (1) **Where a court has to determine the issue of parentage in any proceedings under this Act the court may, on the application of any party to the proceedings or on its own motion, make an order, upon such terms as may be just, requiring any person to give any evidence which may be material to the question, including a blood sample for the purpose of blood test or for DNA analysis...**
- (4) **This section is without prejudice to the provisions of the Status of Children Act, and any Rules made under section 15 of that Act shall mutatis mutandis apply to any steps to be taken under this section to determine the issue of parentage as they apply for that purpose under that Act.**

[12.] The Court must also consider the effect of the presumption of paternity of a child who was born during the subsistence of a marriage under Section 7(1)(a) of the SOCA:

- (1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and shall be recognized in law to be, the father of a child in any one of the following circumstances —
- (a) the person was married to the mother of the child at the time of its birth;

[Emphasis added]

[13.] The Applicant, via Counsel, submits that he was in an intimate relationship with LDA, the biological mother of FDC. The foregoing is supported by the result of a DNA test which has not been disputed. The SCA provides for the inclusion of blood test as supporting evidence to determine paternity (*see Section 14 SOCA and Section 151 of CPA*). Further, although LDA was married to FM at the time of LDA's death, the legal presumption that FM is the minor child's father has been rebutted by FM's sworn affidavit evidence.

[14.] A child, in accordance with Section 5 of the CPA, has the right to reside with his/her parent(s) or guardian(s):

- (1) A child is entitled to live with his parents or guardian save as provided by this or any other Act.
- (2) It shall be the duty of any person having the charge, care or custody of a child to use his best efforts —
- (a) to protect the child from discrimination, violence, abuse and neglect;
- (b) to ensure that the child is enrolled at, and attends school.

[Emphasis added]

[15.] Counsel for the Applicant submits that it is in the best interest of the minor child that the Applicant be granted custody, care and control. The Applicant's affidavit and report of the Guardian *ad litem* states that the Applicant has the financial means and familial support system to provide a safe home environment for the upbringing of the minor child. The Applicant avers that the minor child has no Birth Certificate. He made attempts to obtain a birth certificate for the minor child including swearing an Affidavit along with the minor child's maternal grandmother.

[16.] A child has the right to be registered after birth and to have a name. The Court adopts the observation of *Strachan, J.* in **S.M. v A.D. Re: SAC, a minor** BS 2024 SC 198 at para. [25] thereof:

25... I am mandated to keep the guiding principle that the welfare of this child is of paramount consideration to the forefront of the decision. I consider the paternity of a child to be critical and fundamental to a child's identity. This is also acknowledged in the United Nations Convention on the Rights of the Child, 1989 ("the Convention") Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

[Emphasis added]

[17.] The Guardian *ad litem* notes that the minor child's maternal relatives have been active in her life since her birth. It is also noted that the Applicant and the minor child's maternal relatives have a voluntary contact arrangement which appears to be beneficial for the child. The Applicant has, however, expressed some reservations about allowing the minor child to be removed from Grand Bahama by her maternal relatives.

[18.] Grandparents or other relatives do not have an automatic parental responsibility. Such responsibility is vested in (i) a parent (*mother or father*), (ii) a guardian (*appointed by a parent or the Court*), or (iii) an agency appointed by the Court to safeguard the welfare of a child (*see Section 6 of the CPA*). A parent (mother or father) under the CPA is deemed to be a child's guardian unless the Court suspends or terminates such rights having regard to a child's welfare (*see Section 14(1) of CPA*). The Guardian *ad litem* recommends that the Court, in determining what is in the best interest of the minor child consider encouraging the continuation of the voluntary contact arrangements between the Applicant and the maternal relatives.

[19.] The Court may, on application, appoint a guardian or joint guardians, for example a surviving parent or another person, as the Court deems in the best interest of the child (*see Section 14(3) of CPA*). In this case, the biological mother has passed away and did not appoint a guardian for her minor child before her death. Furthermore, no application has been submitted, except as part of these proceedings, to appoint a guardian.

[20.] In consideration of the foregoing, the following principles are to be addressed as outlined by *Basdeo Persad-Majhaad J.* in the case of **Durity v. Benjamin** (Unreported) on July 30, 1993, in the High Court of Trinidad and Tobago (No 156 of 1993): (a) Behaviour and characteristics of the parties; (b) the Child's education; (c) Whether the child is suffering from any serious illness; (d) Accommodation and material advantages; (e) Satisfaction of the child's basic needs; (f) Whether the custody application is bona fide or not; (g) Wishes of the parent and if possible, wishes of the child; (h) Sex and age of the child and ages of the parents; (i) Religion of the child; (j) Happiness of the child; (k) Future prospects of the child if granted to one parent; and/or (l) Question of access to the unsuccessful party.

[21.] The Court lacks any evidence regarding points (a), (c), (f), and (i). Additionally, there is no evidence showing that the minor child's maternal grandmother has pursued legal steps towards legal guardianship or custody. As a result, she does not have legal rights to the minor child and is not authorized to act on behalf of her. Therefore, if the minor child were to relocate

to the United States, she would face several challenges such as being unable to enroll in school, receive medical treatment, and/or obtain health insurance and social services. The aforementioned would potentially depriving the minor child of her basic needs.

[22.] The Court also recognizes the difference in age between the minor child's father and her grandmother, whose ability to adequately care for the minor child is questionable. This situation could have lasting effects on the minor child's stability. This concern is similarly highlighted in the case of **Joycelyn McDonald and William McDonald v. Wayne Bryan** SCCivApp & CAIS No. 116 of 2009. In paragraph 8, *Sir Burton Hall, CJ* (as he was then) noted:

While the paramount concern for the Court is always the welfare of the child, it would be contrary to public policy to deprive a natural parent of a child of the right to guardianship in favour of a grandparent (who, in the usual order of nature, is likely to die before the parents) unless it is shown that the parent is unfit and the grandparent is better able to assume the responsibility of raising the child.

[Emphasis added]

[23.] Regarding the minor child's future prospects, the father argues that if he gains custody, the minor child's grandmother will have visitation rights. Additionally, the period of time that the minor child resided with her grandmother in Grand Bahama is a key factor in assessing her *welfare and best interests*. Maintaining the minor child's stability and preserving the *status quo* is essential for her well-being. The potential relocation to the United States at a tender age is contentious and seen as a disruption to her stability.

[24.] The Court must evaluate the minor child's father's involvement, particularly with respect to visitation, financial support, and his presence in the minor child's life. According to Section 3(3)(a)-(f) of the CPA, emphasis is placed on these aspects, notably aligning with Sections 3(3)(b), (c), and especially 3(3)(f). The father, as stated by him, appears to possess the financial capacity necessary to support his child, owing to his background as a businessman. The Court acknowledges the necessity of ensuring that sufficient financial resources from his business are available for the minor child's wellbeing.

[25.] The Court does not have any evidence presented that would challenge the Applicant's ability to uphold the general rights of the minor child. However, it is essential for the Court to proceed with care while evaluating this matter. According to Sections 4 and 5(2) of the Act:

4. A child shall have the right —
 - (a) of leisure which is not normally harmful, and the right to participate in sports and positive cultural and artistic activities;
 - (b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
 - (c) to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child (the Convention) subject to any reservations that apply to The

Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws.

5. (1) ...
- (2) It shall be the duty of any person having the charge, care or custody of a child to use his best efforts —
- (a) **to protect the child from discrimination, violence, abuse and neglect;**
- (b) **to ensure that the child is enrolled at, and attends school.**
- [Emphasis added]

[26.] The Court having considered the evidence, submissions of Counsel and the Report of the Guardian *ad litem* finds:

- (a) on a balance of probabilities, the presumption that FM is the father of the minor child has been rebutted;
- (b) the court is satisfied that the relationship of a parent and child exists between the Applicant and the minor child;
- (c) it is in the best interest of the minor child that custody care and control be granted to the Applicant; and
- (d) it is potentially within the best interest of the minor child for the voluntary contact arrangement between the Applicant and the minor child's maternal relatives to be continued.

Disposition

[27.] In all the circumstances of the case, the guiding principles of the CPA and the United Nations Convention on the Rights of Child, the Court hereby declares and orders that:

- (a) The Applicant is the father of the minor child.
- (b) The Applicant shall have custody, care and control of the minor child.
- (c) The birth of the minor child must be entered into the Births Registry at the Registrar General's Department.
- (d) The minor child shall be named and known as FDKC [*de-identified*] as stated in para.1.3 of the Amended Originating Application.

Dated the 31 day of July 2026

[Original signed and sealed]

Constance Delancy
Justice